



## DEPARTMENT OF VETERANS AFFAIRS

8320-01

### 48 CFR Parts 804, 805, 849, and 852

RIN 2900-AQ77

#### VA Acquisition Regulation: Administrative and Information Matters; Publicizing Contract Actions; and Termination of Contracts

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VAAM, and to incorporate any new agency specific regulations or policies. These changes seek to align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the Federal Register. In particular, this rulemaking revises VAAR coverage concerning Administrative and Information Matters, Publicizing Contract Actions, and Termination of Contracts, as well as an affected part concerning Solicitation Provisions and Contract Clauses.

**DATES:** This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2787. (This is not a toll-free number.)

## **SUPPLEMENTARY INFORMATION:**

### Background

On February 13, 2020, VA published a proposed rule in the Federal Register (85 FR 8242) which announced VA's intent to amend regulations for VAAR Case RIN 2900-AQ77 (parts 804, 805, 849, and 852). VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The comment period for the proposed rule ended on April 13, 2020 and VA received no comments. This rule adopts as a final rule, without changes, the proposed rule published in the Federal Register on February 13, 2020.

### Technical Non-Substantive Changes to the Proposed Rule

This rule makes one non-substantive change to the proposed rule to ensure compliance with the FAR. A recent update in 84 FR 40220, dated Aug. 13, 2019, revised the FAR part 4 heading from "Administrative Matters" to "Administrative and Information Matters." This final rule includes this technical non-substantive change to the heading under 804 to "Administrative and Information Matters."

### Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This final rule is not subject to the requirements of E.O. 13771 because this rule is not significant under E.O. 12866.

### Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA’s policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the final rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments or on the private sector.

### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects

48 CFR Parts 804, 805, and 849

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Acting Deputy Secretary, Department of Veterans Affairs, approved this document on May 3, 2020, for publication.

***Consuela Benjamin,***

Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of the Secretary,  
Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 48 CFR parts 804, 805, 849, and 852 as follows:

**PART 804—ADMINISTRATIVE AND INFORMATION MATTERS**

1. The authority citation for part 804 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

2. Revise the heading for part 804 to read as set forth above.

**Subpart 804.1 [Removed and Reserved]**

3. Subpart 804.1, consisting of sections 804.101 and 804.1102, is removed and reserved.

4. Subpart 804.13 is added to read as follows:

**Subpart 804.13—Personal Identity Verification**

**804.1303 Contract clause.**

The contracting officer shall insert the clause at 852.204-70, Personal Identity Verification of Contractor Personnel, in solicitations and contracts that require contractor employees to have routine access to a VA facility or to VA information systems. This clause is used in conjunction with FAR clause 52.204-9, Personal Identity Verification of Contractor Personnel.

## **PART 805 [Removed and Reserved]**

5. Part 805, consisting of sections 805.202, 805.205, and 805.207, is removed and reserved under the authority of 40 U.S.C. 121(c) and 48 CFR 1.301 through 1.304.

## **PART 849—TERMINATION OF CONTRACTS**

6. The authority citation for part 849 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### **Subpart 849.1 [Removed and Reserved]**

7. Subpart 849.1, consisting of sections 849.101, 849.106, 849.111, 849.111-70, and 849.111-71, is removed and reserved.

8. Subpart 849.5 is revised to read as follows:

### **Subpart 849.5—Contract Termination Clauses**

#### **849.504 Termination of fixed-price contracts for default.**

#### **849.504-70 Termination of mortuary services.**

Use the clause at 852.249-70, Termination for Default—Supplement for Mortuary Services, in all solicitations and contracts for mortuary services containing the FAR clause 52.249-8, Default (Fixed-Price Supply and Service).

## **PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

9. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### **Subpart 852.2—Text of Provisions and Clauses**



10. Section 852.204-70 is added to read as follows:

**852.204-70 Personal Identity Verification of Contractor Personnel.**

As prescribed in 804.1303, insert the following clause:

**PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (MAY 2020)**

(a) The Contractor shall comply with current Department of Veterans Affairs policy for personal identity verification of all employees performing under this contract when frequent and continuing access to VA facilities or information systems is required.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to VA facilities or information systems.

(End of clause)

11. Section 852.249-70 is revised to read as follows:

**852.249-70 Termination for Default—Supplement for Mortuary Services.**

As prescribed in 849.504-70, insert the following clause:

**TERMINATION FOR DEFAULT—SUPPLEMENT FOR MORTUARY SERVICES  
(MAY 2020)**

The FAR clause entitled Default (Fixed-Price Supply and Service), at 52.249-8, is supplemented as follows:

The Contracting Officer may terminate this contract for default by written notice without the ten-day notice required by paragraph (a)(2) of the Default clause if—

(a) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably

be considered to reflect discredit upon the Department of Veteran Affairs in fulfilling its responsibility for proper care of remains;

(b) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(c) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(d) The Contractor refuses to perform the services required for any particular remains; or

(e) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

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